

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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LATEACHEEAH G. ANDERSON  
SALVATTO, and RICHARD  
SALVATTO, individually and as  
guardians for JAMAL THROWER, a  
minor,

Plaintiffs,

v.

NO. CIV. S-04-0163 WBS GGH

MEMORANDUM AND ORDER RE:  
MOTION FOR RECONSIDERATION;  
MOTION FOR A NEW TRIAL

COUNTY OF SOLANO, CITY OF  
VALLEJO, COUNTY OF SOLANO  
SHERIFF'S DEPARTMENT,  
LIEUTENANT LIDDICOET, OFFICER  
K. MCCARTHY, VALLEJO POLICE  
DEPARTMENT, WATCH COMMANDER K.  
SCHROEDER, CORPORAL B. CLARK,  
OFFICER WHITNEY,

Defendants.

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On March 26, 2007, this court granted defendants'  
motion for summary judgment with respect to plaintiffs' first and  
fourth causes of action. (March 26, 2007 Order 19.) The court  
also dismissed plaintiffs' state law claims, pursuant to  
U.S.C. § 1367(c) (3), and accordingly ordered that this action be

1 dismissed. (Id.) On April 26, 2007, plaintiffs, acting through  
2 their attorney, Jeffrey Fletcher, filed Notice of Appeal. On  
3 April 30, 2007, judgment was entered on this court's order of  
4 dismissal.

5 On April 23, 2007, plaintiffs Lateacheeah Anderson  
6 Salvatto, acting in propria persona, filed a motion new trial,  
7 and on May 8, 2007 she filed a motion for reconsideration of this  
8 court's order granting summary judgment. Because the court lacks  
9 jurisdiction to hear these motions, they are denied.

10 First, because plaintiff is still represented by  
11 counsel, who in fact filed Notice of Appeal after plaintiff filed  
12 her pro se motion for new trial, she may not simultaneously  
13 appear in propria persona.

14 Second, "filing of a notice of appeal confers  
15 jurisdiction on the court of appeals and divests the district  
16 court of control over those aspects of the case involved in the  
17 appeal." Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S.  
18 373, 379 (1985) (citing Griggs v. Provident Consumer Disc. Co.,  
19 459 U.S. 56, 58 (1982) (per curiam)); see also Williams v.  
20 Woodford, 384 F.3d 567, 586 (9th Cir. 2002) (citing Carriger v.  
21 Lewis, 971 F.2d 329, 332 (9th Cir. 1992); Gould v. Mutual Life  
22 Ins. Co., 790 F.2d 769, 772 (9th Cir. 1986)); see also Long v.  
23 Bureau of Econ. Analysis, 646 F.2d 1310, 1318 (9th Cir. 1981),  
24 vacated on other grounds, 454 U.S. 934 (1981) ("In this circuit,  
25 the rule has generally been stated that the filing of a notice of  
26 appeal divests the district court of jurisdiction to dispose of  
27 the motion after an appeal has been taken, without a remand from  
28 this court.")

1 Third, to seek relief from a district court order  
2 during the pendency of an appeal, "'the proper procedure is to  
3 ask the district court whether it wishes to entertain the motion,  
4 or to grant it, and then move [the court of appeal], if  
5 appropriate, for remand of the case.'" Williams, 384 F.3d at 586  
6 (quoting Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir. 1984)  
7 (further citations omitted)). Plaintiff's pending motions  
8 concern reconsideration of this court's March 26, 2007, order,  
9 which is the very aspect of the case that is currently pending  
10 before the court of appeals, and plaintiff has not followed the  
11 procedure laid out by the Ninth Circuit in Williams.

12 Fourth, even had plaintiff followed the correct  
13 procedures, this court would not entertain her motions for  
14 reconsideration or a new trial. Plaintiff's moving papers  
15 largely rehash the same unsuccessful arguments made against  
16 defendants' motion for summary judgment. United States v.  
17 Wetlands Water Dist. 134 F. Supp. 2d 1111, 1130 (E.D. Cal. 2001)  
18 (motions for reconsideration "should not merely present arguments  
19 previously raised, or which could have been raised in the initial  
20 summary judgment motion."). <sup>1</sup>

21 IT IS THEREFORE ORDERED that plaintiff's motions for  
22 reconsideration and/or new trial to dismiss be, and the same

23 ///

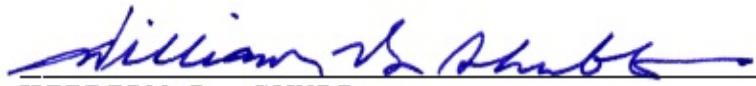
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26 <sup>1</sup> Plaintiff also argues that defendant Officer John  
27 Whitney's declaration and exhibit were fabricated. However,  
28 plaintiff does not demonstrate why she failed to present that  
assertion during the summary judgment proceedings. Moreover,  
plaintiff does not show that Whitney's statements are essential  
to the court's findings in its summary judgment order.

hereby are, DENIED, for lack of jurisdiction.

DATED: May 22, 2007

A handwritten signature in blue ink, appearing to read "William B. Shubb", is written over a horizontal line.

WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE